

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.985 of 2018

In

Miscellaneous Jurisdiction Case No.2165 of 2015

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1. The State of Bihar, through the Collector, West Champaran at Bettiah.
 2. The Collector, West Champaran at Bettiah, namely, Lokesh Kumar.

... .. Appellants.

Versus

Aditya Nath Jha Son of Late Narmadeshwar Jha, Resident of Village-Barharwa, P.S. Chanpatiya, District-West Champaran Presently Practicing Lawyer of the Hon'ble High Court of Judicature at Patna (A.O.R. No. 04311).

... .. Respondent.

Appearance :

For the Appellants : Mr. Anjani Kumar, AAG-4.
Mr. Alok Kumar Rahi, AC to AAG-4.
For the Respondent : Mr. Baxi S.R.P. Sinha, Senior Advocate.
Mr. Randhir Kumar No.1, Advocate.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH

and

HONOURABLE MR. JUSTICE PRAKASH CHANDRA JAISWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH)

Date : 29-11-2019

Heard Mr. Anjani Kumar, learned Additional Advocate General-4, appearing for the State and Mr. Baxi S.R.P. Sinha, learned senior advocate, appearing for the respondent.

2. This intra-court appeal under Clause 10 of the Letters Patent has been filed by the appellants challenging the order dated 19.06.2018 passed by the learned Single Judge in M.J.C. No.2165 of 2015, by which the learned Single Judge has



directed the Collector, West Champaran at Bettiah to file a fresh affidavit showing full and final compliance of the order passed by the Court, failing which the Collector, West Champaran at Bettiah shall be required to be personally present in the Court to explain as to why a contempt proceeding be not initiated against him.

3. An objection has been raised by Mr. Baxi S.R.P. Sinha, learned senior advocate, appearing on behalf of the respondent, regarding the maintainability of the present intra-court appeal.

4. Mr. Anjani Kumar, learned Additional Advocate General has drawn our attention towards the order dated 01.10.2018 passed by the learned Single Judge in M.J.C. No.2165 of 2015, whereby the explanation to the show cause filed by the Collector, West Champaran was rejected. He contended that the tenor of the aforesaid order dated 01.10.2018 passed by the learned Single Judge would itself make it evident that a mandamus has been issued while exercising contempt jurisdiction. Hence, an appeal would be maintainable before the Division Bench.

5. The operative part of the aforesaid order dated 01.10.2018 passed by the learned Single Judge is reproduced



herein below:-

“.....Considering all the facts and circumstances discussed in detail hereinabove, the plea advanced on behalf of the State and the defence taken by learned AAG 4 to nullify the effect of mandamus issued by this Court under Article 226 of the Constitution cannot be accepted. The show cause filed on behalf of the respondent authorities taking the aforesaid plea is, therefore, rejected. The District Magistrate, West Champaran, is given two weeks time to file his further show cause stating as to why a proceeding for contempt be not initiated against him for willfully disobeying the order of this Court.

List the case on 25.10.2018.”

(emphasis mine)

6. Mr. Baxi S.R.P. Sinha, learned senior advocate,

appearing for the respondent submitted that in M.J.C. No.2165 of 2015 several adjournments were taken for filing show cause and finally an explanation to the show cause notice was filed after two years when Section 45 B of the Bihar Tenancy Act was deleted, which clearly indicates that opposite party no.2 has willfully disobeyed the orders passed by the Court. He contended that in the contempt petition no fresh mandamus has been issued rather the learned Single Judge has given ample opportunity to the respondent Collector to comply with the



original order, which was passed long back in the year 1986. He contended that in view of the provisions prescribed under Section 19 of the Contempt of Courts Act, 1971 (for short 'the Act') against a show cause notice an intra court appeal would not be maintainable.

7. We have heard the parties and perused the record.

8. Section 19 of the Act provides for appeal. The relevant portion of Section 19 of the Act is reproduced herein below:-

“19. Appeals.- (1) An appeal shall lie as of right from any order or decision of High Court in the exercise of its jurisdiction to punish for contempt-

(a) where the order or decision is that of a single Judge, to a Bench of not less than two Judges of the Court;

(b) where the order or decision is that of a Bench, to the Supreme Court:”

9. The scope of Section 19 (1) of the Act has been considered by the Supreme Court in the case of **D.N. Taneja Vs. Bhajan Lal** since reported in **(1988) 3 Supreme Court Cases 26** wherein a three Judge Bench has categorically held that appeals under Section 19 of the Act would lie only against the orders punishing the contemnor for contempt and not any other order passed in contempt proceedings. The Court held:-



“The right of appeal will be available under sub-section (1) of Section 19 only against any decision or order of a High Court passed in the exercise of its jurisdiction to punish for contempt.”

10. It further held:-

“When the High Court does not impose any punishment on the alleged contemnor, the High Court does not exercise its jurisdiction or power to punish for contempt. The jurisdiction of the High Court is to punish. When no punishment is imposed by the High Court, it is difficult to say that the High Court has exercised its jurisdiction or power as conferred on it by Article 215 of the Constitution.”

11. The Supreme Court further held:-

“It is true that in considering a question whether the alleged contemnor is guilty of contempt or not, the court hears the parties and considers the materials produced before it and, if necessary, examines witnesses and, thereafter, passes an order either acquitting or punishing him for contempt. When the High Court acquits the contemnor, the High Court does not exercise its jurisdiction for contempt, for such exercise will mean that the High Court should act in a particular manner, that is to say, by imposing punishment for contempt. So long as no punishment is imposed by the High Court, the High Court cannot be said to be exercising its jurisdiction or power to punish for contempt under Article 215 of



the Constitution.”

12. Again in State of Maharashtra Vs. Mahboob S. Allibhoy and another since reported in (1996) 4 Supreme Court Cases 411, the Supreme Court reiterated the above proposition of law in the following words:-

“On a plain reading Section 19 provides that an appeal shall lie as of right from any order or decision of the High Court in exercise of its jurisdiction to punish for contempt. In other words, if the High Court passes an order in exercise of its jurisdiction to punish any person for contempt of court, then only an appeal shall be maintainable under sub-section (1) of Section 19 of the Act. As sub-section (1) of Section 19 provides that an appeal shall lie as of right from any order, an impression is created that an appeal has been provided under the said sub-section against any order passed by the High Court while exercising the jurisdiction of contempt proceedings. The words “any order” has to be read with the expression ‘decision’ used in the said sub-section which the High Court passes in exercise of its jurisdiction to punish for contempt. “Any order” is not independent of the expression ‘decision’. They have been put in an alternative form saying ‘order’ or ‘decision’. In either case, it must be in the nature of punishment for contempt. If the expression “any order” is read independently of the



'decision' then an appeal shall lie under sub-section (1) of Section 19 even against any interlocutory order passed in a proceeding for contempt by the High Court which shall lead to a ridiculous result." (emphasis mine)

13. The ratio laid down by the Supreme Court in the aforesaid cases would clearly indicate that an appeal under Section 19 (1) of the Act would be maintainable only against any order or decision of the High Court passed in exercise of its jurisdiction to punish for contempt i.e. an order imposing punishment for contempt.

14. In the instant case, we find that the learned Single Judge, vide impugned order dated 19.06.2015 and the subsequent order dated 01.10.2018, has simply asked the Collector, West Champaran, Bettiah to file affidavit showing full and final compliance of the order passed by the Writ Court, failing which he has been asked to be personally present in order to explain as to why a contempt proceeding be not initiated against him. Against the said order, in our considered opinion, no appeal under Clause 10 of the Patna High Court Rules, 1916 would be maintainable.

15. Accordingly, the appeal is dismissed as not maintainable. The interim order dated 01.11.2018 passed in the



present appeal stands vacated.

(Ashwani Kumar Singh, J.)

(Prakash Chandra Jaiswal, J.)

Trivedi/-

AFR/NAFR	NA
CAV DATE	NA
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